

Appl. No. : 09/430,687
Filed : October 29, 1999

Sub B
conf.
14. (AMENDED) The method as defined in Claim 10, further comprising collecting diagnostic data from the network for a predetermined duration, the diagnostic data representing a network baseline.

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PI
16. (AMENDED) The method as defined in Claim 10, further comprising non-intrusively injecting data by the first analyzer unit into the network.

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PI
18. (AMENDED) The method as defined in Claim 10, wherein measuring at least one communication parameter includes measuring at least one of a packet loss and packet latency of the link.

20. (AMENDED) The system as defined in Claim 19, wherein the network includes at least one of an ATM, frame relay, Internet, ISDN, and SONET circuits.

Sub B
PI
21. (AMENDED) The system as defined in Claim 19, wherein the controlling means communicates data with the first and second analyzing means via a facilities data link (FDL).

22. (AMENDED) The system as defined in Claim 19, wherein the first analyzing means measures a packet loss and latency of the network link.

23. (AMENDED) The system as defined in Claim 19, wherein at least one of the first and second analyzing means non-intrusively injects data in the network.

REMARKS

By this paper, Applicant has amended Claims 11-14, 16, 18, and 20-23. No claims have been canceled or added. Consequently, Claims 1-23 remain pending and are presented for examination.

The specific changes to the amended claims are shown on a separate set of pages hereto and entitled VERSION WITH MARKINGS TO SHOW CHANGES MADE, which follows the signature page of this Amendment. On this set of pages the insertions are underlined while the deletions are ~~stricken through~~, as illustrated here.

Applicant respectfully requests the Examiner to reconsider this application in view of the following comments.

I. Discussion of Submission of Formal Drawings

In the "Office Action Summary" the Examiner noted objections to the drawings, and attached a "Notice of Draftsperson's Patent Drawing Review" to the Office Action. In response,

Appl. No. : 09/430,687
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Applicant submits a set of formal drawings that takes into account the Draftsperson's objections.
Applicant submits that no new matter has been added by the formal drawings.

II. Discussion of Amendments to Pending Claim Set

Applicant has amended Claims 11-14, 16, and 18 to recite the correct reference number of the claim from which they depend, namely Claim 10. Original Claims 11-14, 16, and 18 incorrectly recited dependency on Claim 11—this is highlighted by the fact that original Claim 11 referenced itself. Similarly, Applicant has amended Claims 20-23 to recite the correct reference number of the claim from which they depend, namely Claim 19. Original Claims 20-23 incorrectly recited dependency on Claim 18. Applicant submits that these amendments are purely formalistic, do not add new matter, and are not made for patentability purposes.

III. Discussion of Rejection of Claims 1-3, 5-7, 11, 12, 16-20, 22, and 23 Under 35 U.S.C. § 102(b)

In paragraph 2 of the Office Action, the Examiner rejected Claims 1-3, 5-7, 11, 12, 16-20, 22, and 23 under 35 U.S.C. § 102(b) as being anticipated by U.S. Pat. 5,600,632 to Schulman ("Schulman"). In rejecting Claim 1, the Examiner stated that Schulman discloses "first and second analyzers [that] are in data communication[, and wherein a] computer is configured to command the two analyzers and collect diagnostic data . . . from all the analyzers." The Examiner cited to column 6, lines 24-29, of Schulman as supporting a finding that Schulman teaches "first and second analyzers [that] are in data communication" with each other.

Applicant respectfully disagrees with the Examiner and submits, however, that nowhere does Schulman teach or suggest a computer "configured to command [a] first analyzer unit to establish a network link with [a] second analyzer unit." It is axiomatic that a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. *See* M.P.E.P. 2131. Applicant respectfully submits that contrary to the Examiner's position Schulman does not teach "first and second analyzers [that] are in data communication" with each other; hence, the analyzers of Schulman do not "establish a network link" in the manner recited by Claim 1.

Applicant's Claim 1 recites "a system for testing at least one link in a communications network, the system comprising . . . a computer in data communication with [a] first and [a]

Appl. No. : 09/430,687
Filed : October 29, 1999

second analyzer[and] configured to command the first analyzer unit to establish a network link with the second analyzer unit, collect diagnostic data from the network link, and communicate the data from the first analyzer unit to the computer.” On the other hand, Schulman merely states that network analyzers “connected to the points shown . . . give a detailed view of packets flowing through the network.” *Schulman* at Col. 6, lines 25-28. Figure 3 of Schulman shows network analyzers [M] connected to a telephone network [405, see Fig. 4] for receiving a synchronization signal from a “dial up time standard.” *Id.* at Col. 6, lines 30-37. Nowhere does Schulman teach or suggest a computer configured to command a “first analyzer to establish a network link with [a] second analyzer,” as recited by Claim 1.

Therefore, since Schulman does not teach or suggest every feature of Claim 1, Schulman fails to anticipate the subject matter of Claim 1. Applicant respectfully requests that the Examiner reconsider this basis of rejection of Claim 1.

Claims 2, 3, and 5-7 depend directly or indirectly from Claim 1. Under 35 U.S.C. § 112, ¶ 4, Claims 2, 3, and 5-7 incorporate by references all of the patentable features of Claim 1, and consequently, these claims are patentable at least for the reasons presented above with regard to Claim 1. Therefore, Applicant respectfully requests that the Examiner withdraw the rejection of Claim 2, 3, and 5-7.

With respect to the rejection of Claims 11, 12, and 16-18, Applicant notes that Claims 11, 12, and 16-18 depend directly or indirectly from independent Claim 10, and under 35 U.S.C. § 112, ¶ 4, Claims 11, 12, and 16-18 incorporate all of the patentable features of Claim 10. Claim 10 recites a method of testing at least one link in a communication network, the method comprising “establishing a link between a first analyzer unit and a second analyzer unit.” As explained above with reference to Claim 1, Applicant submits that nowhere does Schulman describe or suggest “establishing a link between a first analyzer unit and a second analyzer unit,” as recited by Claim 10. Therefore, Schulman fails to anticipate Claim 10 and, thereby, also fails to anticipate Claims 11, 12, and 16-18. Applicant respectfully request that the Examiner reconsider the rejection of Claims 11, 12, and 16-18.

With respect to the rejection of Claims 19, 20, 22, and 23, Applicant notes that Claim 19 recites a system for testing at least one link in a communications network, the system comprising “controlling means . . . configured to command [a] first analyzing means to establish a network link with [a] second analyzing means.” For the reasons stated above with reference to Claim 1,

Appl. No. : 09/430,687
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Applicant submits that nowhere does Schulman teach or suggest this feature of Claim 19, and therefore, Schulman does not anticipate the subject matter of Claim 19. Accordingly, Applicant respectfully submits that the Examiner reconsider the rejection of Claim 19.

Claims 20, 22, and 23, as amended, depend on independent Claim 19, and under 35 U.S.C. § 112, ¶ 4, Claims 20, 22, and 23 incorporate all of the patentable features of Claim 19. Therefore, Applicant submits that Claims 20, 22, and 23 are also in condition for allowance for the reasons stated above with reference to Claim 19.

IV. Discussion of Rejection of Claims 4, 13, and 21 Under 35 U.S.C. § 103(a)

In paragraph 4 of the Office Action, the Examiner rejected Claims 4, 13, and 21 under 35 U.S.C. § 103(a) as being unpatentable over Schulman and U.S. Patent 5,691,976 to Engdahl et al. ("Engdahl"). Applicant submits that to support a rejection under § 103(a), the combined teachings of Schulman and Engdahl must teach or suggest all of the features recited in the rejected claims. Moreover, Schulman and Engdahl, singly or in combination, must provide a motivation to combine the features in the manner recited in the claims. M.P.E.P. §§ 2142-3.

Claims 4, 13, and 21 respectively depend on independent Claims 1, 10, and 19. Applicant submits that neither Schulman nor Engdahl, singly or in combination, teach or suggest all of the features of any one of Claims 1, 10, or 19. As shown above, Schulman fails to teach all of the features of any one of Claims 1, 10, or 19. Applicant submits that Engdahl does not disclose or suggest the missing features, and the Examiner has not pointed out where Engdahl teaches or suggests the missing features. More specifically, nowhere do Schulman or Engdahl, or their combination, teach or suggest a computer "configured to command [a] first analyzer unit to establish a network link with [a] second analyzer unit," as recited by Claim 1; or "establishing a link between a first analyzer unit and a second analyzer unit," as recited by Claim 10; or "controlling means . . . configured to command [a] first analyzing means to establish a network link with [a] second analyzing means," as recited by Claim 19.

Consequently, Applicant submits that Claims 4, 13, and 21 are in condition for allowance, and respectfully requests that the Examiner withdraw the rejection of Claims 14, 13, and 21.

Appl. No. : 09/430,687
Filed : October 29, 1999

V. Discussion of Rejection of Claims 8-10, 14 and 15 under 35 U.S.C. § 103(a)

In paragraph 5 of the Office Action, the Examiner rejected Claims 8-10, 14, and 15 under 35 U.S.C. § 103(a) as being unpatentable over Schulman and U.S. Patent 5,796,723 to Bencheck et al. ("Bencheck"). Applicant submits that to support a rejection under § 103(a) Schulman and Bencheck must teach or suggest all of the features recited in the rejected claims; moreover, Schulman and Bencheck, singly or in combination, must provide a motivation to combine the features in the manner recited in the claims. M.P.E.P. §§ 2142-3.

Claims 8-10 depend on Claim 1, and Claims 14 and 15 depend on Claim 10. Applicant submits that neither Schulman nor Bencheck, singly or in combination, teach or suggest all of the features of any one of Claims 1 or 10. As shown above, Schulman fails to teach all of the features of any one of Claims 1 or 10. Applicant submits that Bencheck does not disclose or suggest the missing features, and the Examiner has not pointed out where Bencheck teaches or suggests the missing features. More specifically, nowhere do Schulman or Bencheck, or their combination, teach or suggest a computer "configured to command [a] first analyzer unit to establish a network link with [a] second analyzer unit," as recited by Claim 1; or "establishing a link between a first analyzer unit and a second analyzer unit," as recited by Claim 10.

Consequently, Applicant submits that Claims 8-10, 14, and 15 are in condition for allowance, and respectfully requests that the Examiner withdraw the rejection of Claims 8-10, 14 and 15.

CONCLUSION

Applicant has endeavored to address all of the Examiner's concerns as expressed in the Office Action. Accordingly, amendments to the claims, the reasons therefor, and arguments in support of patentability of the pending claim set are presented above. Any claim amendments which are not specifically discussed in the above remarks are made in order to improve the clarity of claim language, to correct grammatical mistakes or ambiguities, and to otherwise improve the clarity of the claims to particularly and distinctly point out the invention to those of skill in the art. Finally, Applicant submits that the claim limitations above represent only illustrative distinctions. Hence, there may be other patentable features that distinguish the claimed invention from the prior art.

Appl. No. : 09/430,687
Filed : October 29, 1999

In view of the foregoing, Applicant respectfully requests reconsideration and withdrawal of the outstanding rejections and, particularly, that all claims be allowed. If the Examiner finds any remaining impediment to the prompt allowance of these claims that could be clarified with a telephone conference, the Examiner is respectfully invited to call the undersigned.

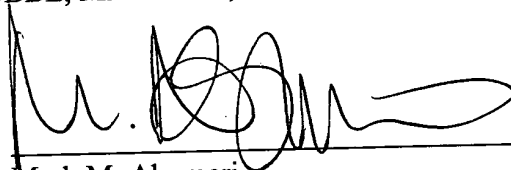
Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: February 13, 2003

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11. (AMENDED) The method as defined in Claim ~~44~~10, further comprising transmitting the communication parameter to a computer.
12. (AMENDED) The method as defined in Claim ~~44~~10, further comprising remotely commanding the first and second analyzer units via commands via the network.
13. (AMENDED) The method as defined in Claim ~~44~~10, further comprising remotely commanding the first and second analyzer units via commands communicated over a facilities data link (FDL).
14. (AMENDED) The method as defined in Claim ~~44~~10, further comprising collecting diagnostic data from the network for a predetermined duration, the diagnostic data representing a network baseline.
16. (AMENDED) The method as defined in Claim ~~44~~10, further comprising non-intrusively injecting data by the first analyzer unit into the network.
18. (AMENDED) The method as defined in Claim ~~44~~10, wherein measuring at least one communication parameter includes measuring at least one of a packet loss and packet latency of the link.
20. (AMENDED) The system as defined in Claim ~~48~~19, wherein the network includes at least one of an ATM, frame relay, Internet, ISDN, and SONET circuits.
21. (AMENDED) The system as defined in Claim ~~48~~19, wherein the controlling means communicates data with the first and second analyzing means via a facilities data link (FDL).
22. (AMENDED) The system as defined in Claim ~~48~~19, wherein the first analyzing means measures a packet loss and latency of the network link.
23. (AMENDED) The system as defined in Claim ~~48~~19, wherein at least one of the first and second analyzing means non-intrusively injects data in the network.